

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2928 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANBHAI G GAMIT

Versus

STATE OF GUJARAT

Appearance:

MR RJ OZA for Petitioner

NOTICE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/02/2000

ORAL JUDGEMENT

Inspite of the fact that this petition was admitted way back in the year 1988 and the respondents were duly served, none appears for the respondents when the matter is called out today either in the first sitting or in the second sitting. Since the matter is pending for final hearing since last 12 years, the Court proceeds to dispose of the matter on merits on the basis of the material on record of this petition which

obviously does not find any affidavit in reply controverting the averments made in the petition.

2. The petitioner is a Watchman. Initially he was appointed as a workcharge chowkidar on the establishment of respondent No.2-Executive Engineer, Jhuj Project Canal Division, Chikhli, Dist. Valsad. His services came to be terminated by order dated 21.1.1985 (Annexure "A"). Thereafter the petitioner was again appointed as a workcharge chowkidar by respondent No. 2 and thereafter by the impugned order dated 6.5.1988 (Annexure "C"), respondent No. 2 called upon the petitioner to pay an amount of Rs.11,730/-. The recovery was ordered on the ground that when the petitioner was on duty as a Watchman on 19.10.1984, iron bars worth Rs.11,730/- were stolen from the Government Store at the site in question. It is against the aforesaid order that the present petition is filed.

3. The petitioner has made specific averments in the petition that before passing the impugned order, no inquiry was held against the petitioner. The impugned order makes a passing reference to some explanation offered by the petitioner to the effect that the petitioner was sleeping at the relevant time. However, when there are specific averments in the petition that no inquiry is held against the petitioner and that no show cause notice was issued to the petitioner calling upon the petitioner to make good the aforesaid amount and when no affidavit is forthcoming controverting the aforesaid averments made on oath and in fact when no assistance is forthcoming from the respondents as they have not even engaged anyone to oppose this petition and the petition is pending for final hearing for the last 12 years, the Court has no other alternative but to allow the petition and to quash and set aside the impugned order dated 6.5.1988 (Annexure "C" to the petition) only on the ground of violation of principles of natural justice. Since, while admitting the petition, this court had granted interim relief in favour of the petitioner staying the recovery, no further order is required to be passed.

4. In the result, the petition is allowed. The impugned order dated 6.5.1988 (Annexure "C" to the petition) is quashed and set aside with liberty to the authorities to pass a fresh order of recovery in accordance with law.

Rule is made absolute to the aforesaid extent.
There shall be no order as to costs.

February 11, 2000 (M.S. Shah, J.)
sundar/-